No. 85-1644.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

ROY P. BRIEHLER,
APPELLANT,

v.

POSEIDON VENTURE, INC.,
A RHODE ISLAND CORPORATION,
WILLIAM BURGIN, SYLVIA'S INC.,
A RHODE ISLAND CORPORATION,
JERRY L. McINTYRE
APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF RHODE ISLAND

Appellees Poseidon Venture, Inc., William Burgin, and Jerry L. McIntyre's Motion to Affirm Judgment Below

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Object of Motion

The judgment below should be affirmed because it is manifest that the questions on which the decision of the Court depends are so unsubstantial as not to need further argument.

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Statement of Facts

This appeal is from the Rhode Island Supreme Court's affirmance of a declaratory judgment of the Providence County Superior Court confirming that appellee William Burgin ("Burgin") duly acquired title to the ferry boat "The Narrows" and miscellaneous other property at two execution sales conducted in Jamestown, Rhode Island, on February 26, 1983. The Rhode Island Supreme and Superior Courts re-

jected the claims of appellant ("Briehler") that title to "The Narrows" and the property on board should be confirmed in him or in one of his corporations.

"The Narrows" is a welded steel, single deck ferry built in 1946. Briehler purchased it from the federal government as surplus property in 1971 for just over $11,000, and partially renovated it (App. A-2).[1]

In 1982, Briehler was sued in Second Division District Court, Newport County, by a fuel oil dealer for oil delivered to "The Narrows" and repair services performed on Briehler's automobile (App. A-2, A-3). Briehler appeared pro se, listing a residence address in the State of New Jersey (App. A-21). Judgment was entered against him for $602.61 plus interest and costs (App. A-3). Briehler was present at the time judgment was entered against him (App. 21). On that day, the attorney for the judgment creditor personally notified him of the amount required to be paid to satisfy the judgment. *Id.* Briehler refused to pay the judgment, and voluntarily absented himself from the State of Rhode Island. *Id.* He filed a late appeal of the judgment to the Newport County Superior Court, which was duly dismissed by motion upon proper notice to him (App. 21, 22). Briehler also received a copy of the Order of Dismissal of the Appeal (App. A-22). Thereafter, execution issued on the District Court judgment, and the judgment creditor, unable to locate Briehler in the State of Rhode Island, proceeded to levy upon the goods and chattels Briehler had left behind.

The relevant statute, Rhode Island General Laws, Sec. 9-26-12 (the text of which is set forth at page 5 of Briehler's Jurisdictional Statement), required that notice of the levy

[1] "App. ____" makes reference to pages of the Appendix to Briehler's Jurisdictional Statement. Pages A-1 through A-10 consist of the Opinion of the Rhode Island Supreme Court herein. Pages A-11 through A-31 consist of the Decree of the Providence County Superior Court denying and dismissing Briehler's complaint.

and sale of goods pursuant to an execution be advertised at least ten (10) days before the sale. It is undisputed that such notice was published in a newspaper of general circulation in accordance with the statute, and that the sale was in fact well attended (App. A-23). Moreover, the execution itself was posted on "The Narrows" for several weeks before the sale. Despite the fact that Briehler was in the State of Rhode Island "a couple of times" during the weeks preceding the sale, he continued to ignore the judgment and execution, and his Rhode Island property was sold to appellee William Burgin, the successful bidder at the February 26, 1983 auction (App. A-23). Burgin later transferred title to Poseidon Venture, Inc., a corporation in which he and appellant Jerry L. McIntyre are stockholders.[2]

Argument

Supreme Court Rule 16(c) provides that summary affirmance of the judgment appealed from should enter where, "it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument." Appellees respectfully move that the Court summarily affirm the judgment below on that basis here.

Briehler's theory is that post judgment levy and sale procedures are unconstitutional unless they provide for "actual" notice to the debtor of the sale. He would impose upon judgment creditors holding perfectly valid judgments and executions responsibility for seeking out the judgment debtor and essentially issuing a personal invitation to the sale. He would do so even where, as here, the judgment debtor has appeared in the underlying action and is fully cognizant of the judgment against him, but has chosen to ignore it and to absent himself from the jurisdiction, leaving the judgment creditor with recourse only to property remaining within the jurisdic-

[2] In accordance with Supreme Court Rule 28.1, appellee Poseidon Venture, Inc. states that it has no parent, subsidiary, or affiliated corporations.

tion. Appellants have found no authority which even arguably supports this bizarre proposition.

The constitutional implications of Rhode Island's post judgment levy and sale procedure were clearly not Briehler's central focus in the litigation below. As appears from the original Decree of the Providence County Superior Court, the central issue at trial was whether Briehler was in fact the true owner of "The Narrows". The constitutional issues about which Briehler makes so much now were not even passed upon. Similarly, Rhode Island Supreme Court began its discussion of the issues on appeal below as follows:

> Although Briehler has put forth a plethora of reasons why the constable's sale should be vacated, only two of his contentions merit any discussion . . . ." (App. A-3).

The Court did not count Briehler's constitutional arguments among the contentions it deemed meritorious of discussion. So insubstantial were those issues in the broader context of this litigation that the Court rejected them out of hand. An identical result should obtain here without the necessity of briefing and argument.

Conclusion

For the reasons set forth above, appellees Poseidon Venture, Inc., William Burgin, and Jerry L. McIntryre's motion to affirm the judgment below pursuant to Supreme Court Rule 16(c) should be granted.

Respectfully submitted,

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